IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Crl.MC.No. 2704 of 2007()

CC.590/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM

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PETITIONER: ACCUSED

THULASI PARAMESWARAN, AGED 48 YEARS,
W/O PARAMESWARAN, SREE DURGA MANDIR,
TC 7/1377(1), KATTAKKAL LANE, VETTAMUKKU,
THIRUMALA VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.ISSAC NINAN
SRI.RAJESHKUMAR T.K.

RESPONDENTS: COMPLAINANT

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1. P.SAKTHIKUMAR,
KARTHI NIVAS, T.C.28/860,
KAITHAMUKKU, PETTAH,
THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/08/2007 ALONG WITH CRMC NO.2708/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. Nos. 2704 & 2708 OF 2007

Dated this the 23rd day of August, 2007

ORDER

The common petitioner in these two Crl.M.Cs. faces indictment in two separate prosecutions - both under Sec.138 of the Negotiable Instruments Act and both initiated by the same complainant i.e., the 1st respondent herein. The case has reached the fag end of the trial. The petitioner raises an identical contention in both the prosecutions. That the signature in the cheques, though admitted, the cheques were not issued for the due discharge of any legally enforceable debt/ liability. According to him, they were given as blank signed cheques to the complainant. The said cheques have been misutilised by the complainant to initiate these unsustainable prosecutions. This, in short, is the contention.

2. In the course of cross-examination of the complainant, suggestions were thrown at the complainant that demands

were made over the telephone for the amounts which were due. Significantly, the tape recorded conversation was not put to the complainant and admission or denial was not sought. At the stage of defence evidence, the tape recorded conversation was produced. It was prayed that they may be received in evidence. The learned Magistrate, it would appear, wanted the voice identification to be made. For that purpose, both sides were directed to submit a panel of experts. They did. The experts stated that they cannot compare the voice in the cassette. Thereupon, separate applications were made – one after the other to send the cassette to the Forensic Science Laboratory at Thiruvananthapuram and later to the Central Forensic Science Laboratory at Hydrabad. All those petitions were also dismissed. The petitioner has come to this Court with these petitions now lamenting about the dismissal of such separate applications in each case to forward the cassette to the Forensic Science Laboratory at Thiruvananthapuram and the Central Forensic Science Laboratory at Hydrabad. The learned counsel for the petitioner submits that in not having sent the audio

cassette to the F.S.Ls. justice has been denied to him. It is prayed that powers under Sec.482 of the Cr.P.C. may be invoked to set aside the impugned orders.

3. I do first of all take note of the fact that no attempt has at all been made admittedly, when the complainant was in the box, to confront complainant with the alleged tape recorded statement of his which would allegedly expose the hollowness of his present version. The learned Magistrate, it appears, had granted the parties an opportunity to examine the expert. The requests to send the audio cassette to the F.S.Ls. have been dismissed.

4. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this Court under Sec.482 of the Cr.P.C. Such jurisdiction is to be invoked only exceptionally in aid of justice. Such jurisdiction cannot, of course, be invoked as a matter of course.

5. The challenge against the interlocutory orders during the pendency of the proceedings is frowned upon by law. This policy of the law is reflected clearly in Sec.397(2) of the Cr.P.C.

which proscribes the challenge against the interlocutory orders in revision. What cannot be challenged under Sc.397(2) of the Cr.P.C. is sought to be challenged in proceedings before this Court under Sec.482 of the Cr.P.C. I do first of all take note of the fact that the complainant has admittedly not been attempted to be confronted with the alleged recorded statement in the cassette. I am certainly convinced that this is not a fit case where powers under Sec.482 of the Cr.P.C. can or ought to be invoked at this stage. Normally, an interlocutory order must wait for its challenge along with the final order to be passed in the proceedings. There can be exception to the rule. But very compelling reasons must be there to persuade a court to invoke powers under Sec.482 of the Cr.P.C. to interfere with an interlocutory order. I am, in these circumstances, satisfied that this is not a fit case where such powers ought to be invoked against the impugned interlocutory orders. Without prejudice to the rights of the petitioner to challenge the impugned orders along with the final orders to be passed in the prosecutions, these Crl.M.Cs. can be dismissed.

6. In the result, these Crl.M.Cs. are dismissed. But I may hasten to observe that the dismissal of these Crl.M.Cs. will not in any way fetter the rights of the petitioner to raise all relevant, appropriate and necessary contentions before the learned Magistrate in the pending proceedings or to raise all challenges including the challenge against the impugned interlocutory orders later in the challenge against the final orders which are to be passed by the learned Magistrate in the prosecutions, if such challenge be necessary.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge